CONCLUSION

The enforceability of arbitration clauses is clearly under siege in Montana, and one commentator has indeed suggested that the battle is already over.

> Inevitably a national corporation, like the Subway sandwich franchisor in *Casarotto*, will not tailor its arbitration clause or its waiver of rights to the requirements the Montana Supreme Court enumerated in *Kloss* and the arbitration provision will be struck down. The U.S. Supreme Court held in *Casarotto* that the legislature could not enact provisions that restrict arbitration in that situation. And in footnote three to that case, it warned the courts not to do what the legislature may not do. [citation omitted] But the Montana Supreme Court has now accomplished what the legislature was unable to do – the regulation if not the prohibition of pre-dispute arbitration clauses in Montana. It is possible that the higher court will right this wrong, or even that a reconstituted Montana Supreme Court will see things differently. Until that time, however, arbitration is dead in Montana.

Scott J. Burnham,[2] *The War Against Arbitration in Montana*, 66 Mont. L. Rev. 139, 200 (2005). Absent immediate intervention by this Court, the Montana Supreme Court's continuing refusal to heed this Court's rulings or enforce the Federal Arbitration Act will be assured.

For the foregoing reasons and those stated previously, Petitioners respectfully request that this Court grant their Petition for Writ of Certiorari.

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[2] Scott J. Burnham is a Professor of Law at the University of Montana School of Law. Scott J. Burnham, *The War Against Arbitration in Montana*, 66 Mont. L. Rev. 139, fn.1 (2005).

Respectfully submitted this 20th day of January 2006.

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